

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

NEW HAVEN UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2014040285

ORDER FOLLOWING PREHEARING
CONFERENCE, ORDER GRANTING
CONTINUANCE, AND ORDER
GRANTING MOTION TO AMEND
COMPLAINT

On May 23, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Peter Paul Castillo, Office of Administrative Hearings. Laurie Reynolds, Attorney at Law, appeared on behalf of the New Haven Unified School District. Susan Foley, Attorney at Law, appeared on behalf of Student. The PHC was recorded.

1. Request for a Continuance. At the PHC, Student made a request for a continuance as the parties were awaiting a response from a third party on a key issue in the case that may resolve it. District did not oppose the continuance request. A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted. (34 C.F.R. § 300.515(a) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).)

Student established good cause for a continuance to receive a response from the third party. Therefore, the PHC and the due process hearing are continued. The PHC shall take place on August 22, 2014, at 10:00 a.m.,¹ and the due process hearing shall take place on September 9 through 11, 2014. The hearing shall begin at 9:00 a.m. and end at 5:00 p.m., except for September 9, 2014, when the hearing shall begin at 9:30 a.m., unless otherwise ordered. The hearing shall take place at the District's offices, located at 34200 Alvarado-Niles Road, Union City, California 94587.²

¹ The parties need not file additional PHC statements. Any amendments by either party are due to OAH and the opposing party by 5:00 p.m. on August 15, 2014.

² At a minimum for the hearing, the room shall have separate tables capable of being moved into a courtroom configuration, and be accessible, as follows: (1) one table for Student's representatives; (2) one table for District's representatives; (3) one table for the

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing good cause to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

2. Leave to Amend the Complaint. At the PHC, the parties discussed District's need to amend the complaint to include allegations regarding a recent individualized education program team meeting that involves the same issues regarding the location of Student's educational program.

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

The motion to amend is timely and is granted. District shall file the amended complaint on Student and OAH by 5:00 p.m., on May 27, 2014. The amended complaint shall be deemed filed as of the date OAH receives it. All applicable timelines shall be reset as of the date of this order, and the parties' continuance request to have the hearing on the dates in Paragraph 1 is granted.

3. Settlement. The parties are encouraged to continue their attempts to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately should they reach a settlement or otherwise resolve the dispute before the scheduled hearing. If a settlement is reached five business days or fewer before the due process hearing is scheduled to begin, the parties shall, in addition, immediately inform OAH of that fact by telephone at (916) 263-0880. Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. IF A FULL AND FINAL SETTLEMENT IS REACHED AFTER 5:00 P.M. ON THE LAST BUSINESS DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035, AND SHALL ALSO LEAVE CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. The ALJ will check for messages the evening prior to the hearing and the morning of the hearing.

ALJ with a nearby electrical outlet; and (4) one witness table. District shall ensure that all parties and the ALJ have drinking water and tissue available to them.

4. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: May 23, 2014

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings